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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,151	11/27/2006	Arno Hahn	D4700-00426	6815

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DUANE MORRIS LLP - Philadelphia
IP DEPARTMENT
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103-4196

EXAMINER

FOX, JOHN C

ART UNIT	PAPER NUMBER
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3753

MAIL DATE	DELIVERY MODE
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08/19/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,151	Applicant(s) HAHN ET AL.	
	Examiner John Fox	Art Unit 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6,7,11-16 and 18-24 is/are pending in the application.
- 4a) Of the above claim(s) 2,4,6,7,11-13,15 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,14 and 18-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The objection to the drawings is withdrawn in view of applicant's remarks.

Claims 2, 4, 6-7, 11-13, 15-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by FR 2,466,692.

FR '692 shows a valve with a valve body with a mixer cartridge with a lever including elements 32 and 29 associated with the cartridge and a grip 31 having a flange 43. A locking device 34 and an associated joint, unlabelled, are fixed to the body and bear on flange 43 to prevent the removal of the grip.

Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues "there is virtually no overlap over the edge of the flange at the extreme of the lever travel as shown in Figs. 1 and 2", referring to element 34 and the associated joint. The Examiner agrees that the leftmost side of flange 43, as shown in Figures 1 and 2, is covered by the joint with little overlap. The Examiner also notes that the rightmost side of the flange 43 is covered by the joint by an extensive margin. It is believed that a routineer in the art would readily apprehend that the flange 43 between the rightmost side and the leftmost side is also covered by the joint and, thus, flange 43 is covered in its entirety by the joint and in all positions of the lever.

Applicant identifies the unlabelled joint as a Teflon seal and argues that it “is not configured to prevent removal of the operating grip from the operating lever. Apart from the nut on the end of the operating lever,..., the structure is not capable of preventing removal of the operating grip from the operating lever.” The Examiner disagrees. If the nut were removed from the lever, it would still be impossible to move the flange 43 past the Teflon joint which bears on it over 360°. It would thus be impossible to remove the operating grip.

Applicant argues that the Teflon seal is not capable of retaining the operating grip on the lever because it is plastic. The Examiner disagrees. There are innumerable examples from the past 50 years of structural mechanical components formed of plastic or Teflon.

Applicant argues for claim 1 as reciting an arrangement for affixing the grip to the shaft “without using a locking element that interacts with the operating shaft”. This is simply an inaccurate understanding of the claims. The claims use the open ended term “comprising” and nothing in the claims precludes the presence of an element or an engagement between the lever and the grip, in addition to the claimed locking element. Indeed, every drawing in the instant application shows a threaded mechanical connection between the lever and the grip, in addition to the claimed locking element. Since FR '692 shows each and every element called out in the claims, the rejection is still seen to be proper and will be maintained.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR '692 in view of Zucchetti et al (US 7,147,005/WO 03/006754).

FR '692 shows the claimed device except for the locking element being part of an outlet of the fitting. Zucchetti et al show a mixing valve with a rosette 59 which overlays a flange 75 on the valve actuator and cooperates to retain the actuator and cartridge 19 in the valve body, and which includes an outlet of the mixing valve to 33. Flange 75 is read as being analogous to flange 43 of FR '692 and rosette 59 as being analogous to locking element 34/associated joint of FR '692. It would have been obvious at the time the invention was made for one of ordinary skill in the art to have configured the valve of FR '692 to use an outlet of the mixing valve thereof disposed in the locking element 34 as taught by Zucchetti et al under the rationale set forth in KSR v. Teleflex, 550 U.S.____, 127 S. Ct. 1727, 82 U.S.P.Q. 2d 1835 (2007) that the simple substitution of one known element for another to obtain predictable results is obvious.

Applicant's request that the second Office Action be made non-final is denied.

35 USC §132(a) requires that the statutory grounds of rejection be set forth and the reference(s) relied upon identified. The Office Action of March 5, 2009 complied with that requirement.

37 CFR § 1.104 (c) (2) states, in part, "When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied

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on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.”

FR '692 is neither complex nor obscure. The EPO Examiner cited it as an X reference and apparently explained how it met the claims (the Examiner does not read German and applicant has not provided a translation of the search report). Applicant has had several years to study the reference. And it is clear from applicant's response that they understood how FR '692 was applied against the claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Fox whose telephone number is 571-272-4912.

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The examiner can normally be reached on Monday-Saturday from 10am-6pm (Hoteling Program).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John Fox/
Primary Examiner
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